IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision No.958 of 1990
Date of decision: 17-3-2007

Ram Sarup Gupta(since deceased)
through his L.Rs. … Petitioners

versus

State of U.T. Chandigarh … Respondent

THE HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Dinesh Bhardwaj, Advocate,
for the petitioners

Mr. Gautam Dutt, Advocate,
for Mr. R.S.Rai, Advocate,
for the respondent-UT.

…

ARVIND KUMAR, J:

This revision is directed against judgment dated 5.7.1990 passed by the Addl. Sessions Judge, Chandigarh upholding the judgment and order of the Judicial Magistrate I Class, Chandigarh, qua accused Ram Sarup Gupta(since deceased) wherein he had been convicted and sentenced to rigorous imprisonment for one year and a fine of Rs.200/- each and in default of payment of fine, to further undergo imprisonment for three months in offences under Section 468 and 471 read with Section 120-B IPC.

In brief, the facts of the case are that a complaint, Exhibit PW-7/A, was lodged by Randhir Singh, Inspector, Vigilance Bureau,Punjab, with the Police Station, Sector 17, Chandigarh, that from reliable sources he came to know that accused Ram Sarup Gupta, Sub Divisional Engineer, by making wrong entries in the cash books, converted a sum of Rs.1270-50P to his own use and thus, misappropriated Rs.1837-20P to be disbursed to S/Sh. Joga Singh, Joginder Pal Verma and Rajinder Pal Singh by forging their

signatures. It was reported that accused Ram Sarup Gupta then disbursed Rs.238.50P to Joga Singh and Rs.1157.25P to Joginder Pal Verma while Rs.441.30P to be disbursed to Rajinder Pal Singh were still with him. It was further reported that accused Ram Sarup Gupta had tampered with the cash and log-books and other record in order to misappropriate Rs.72.20P and Rs.32.90P. It was also reported that the said accused had also misappropriated a government alarm watch. On the basis of the complaint of the Inspector Vigilance Bureau, an FIR, Exhibit PW-7/B was registered.

During investigation of the case by the police, it came to light that accused Kirpal Singh and Gurbachan Singh, who were posted as Sub Divisional Clerks, with accused Ram Sarup Gupta at the relevant time, and accused Karnail Singh who was working as driver of the jeep allotted to accused Ram Sarup Gupta, were also party to the said cheating. It was also revealed that the accused had tampered with vouchers and cash books with a view to enhance the quantity of the petrol purchased for the jeep for withdrawing the enhanced sum of money from the Government Treasury.

Karnail Singh, driver, was declared proclaimed offender.

Accused Ram Sarup Gupta, Kirpal Singh and Gurbachan Singh were then charge-sheeted under Sections 409, 468 and 471 read with Section 120-B IPC, to which they pleaded not guilty and claimed trial.

In order to bring home guilt to the accused, the prosecution examined as PW-1 Sardul Singh, Superintendent, Land Acquisition Drainage Circle, Patiala, Arjan Singh as PW-2, Shri Krishan as PW-3, Avinash Chander as PW-4, Kulwant Singh as PW-5, Randhir Singh as PW-6, Budh Parkash as PW-7, B.R.Saini as PW-8, M.M.Chaudhary as PW-9, K.N.Parshad as PW-10, Nanha Ram, SI, as PW-11, ASI Balram as PW-12 and S.R.Bansal as PW-13, and then closed its evidence.

Accused in their statements under Section 313 Cr.P.C. pleaded innocence. They, however, did not lead any defence evidence.

The learned Judicial Magistrate I Class, Chandigarh, on appreciation of evidence adduced on record, vide judgment and order dated 17.2.1987 acquitted all the accused under Section 409 IPC for the said misappropriation of Rs.1837/- and Rs.51.50P and a clock and acquitted Kirpal Singh of all the charges. However, he convicted accused Ram Sarup Gupta and Gurbachan Singh under Sections 468 and 471 IPC read with

Section 120-B IPC in the manner indicated above.

Feeling aggrieved by the afore-stated judgment and order, accused Ram Sarup Gupta and Gurbachan Singh filed an appeal. During the pendency of the appeal, accused Ram Sarup Gupta expired. The learned Additional Sessions Judge, Chandigarh, vide judgment dated 5.7.1990 upheld the conviction of accused Ram Sarup Gupta but set aside the judgment of the Judicial Magistrate I Class convicting the accused Gurbachan Singh and ordered his acquittal. It was, however, observed that since Ram Sarup Gupta accused had expired during the pendency of the appeal, the question of his undergoing the substantive sentence did not arise.

The present revision is by the legal representatives of accused Ram Sarup Gupta(since deceased) which was admitted.

I have heard the learned counsel for the parties.

The entire case is now based upon cash memo. Exhibit P-4, pertaining to the petrol pump wherein 15 litres of petrol of Rs. 49.35P was purchased and then forged into 25 litres for Rs.82.25P. Similarly, cash memo. Exhibit P-2, wherein 10 litres petrol of Rs.33.10P was purchased but forged into 30 litres for Rs.105.30P for jeep No.2802 which was under the control of Ram Sarup Gupta(since deceased). Karnail Singh (P.O.) was driver on the said jeep at that point of time. Undisputedly, the said forgery in both the cash memos. had been made by Karnail Singh. The imputation against Ram Sarup Gupta (since deceased) (now represented by his his legal heirs) is that he passed the bill for payment. Since Ram Sarup Gupta himself had not forged those cash memos. for sustaining conviction, it was necessary for the prosecution to prove that he had known or had the reasons to believe that those cash memos. were the forged ones. However, there is no evidence of the worth led by the prosecution; rather on the contrary it is evident from the statement of PW-8 B.R.Saini, Retd. Chief Engineer, who had conducted the enquiry that it is always not that the said jeep was under the exclusive control of Ram Sarup Gupta and was used by S.E. (Investigation) and the Executive Engineer on 23.9.1975 i.e. a day after the petrol of 15 litres was taken. In this situation, how Ram Sarup Gupta could have a complete control that how much petrol had been taken by driver of jeep, namely, Karnail Singh. Further, his statement coupled with

both the bills shows that it was first checked and verified and then passed for payment by him. Obviously, the act was in performance of his official duties, under the bona-fide belief. There is nothing to suggest that he had knowledge or belief of the forged character of those cash memos. which had been submitted along with the bills by Karnail Singh driver. The payment was to be received by Karnail Singh driver and he in no manner stood to gain. There is also no evidence of any kind of conspiracy between him and his driver Karnail Singh. No doubt, conspiracies are not hatched in open, by their nature they are secretly planned but the same can be proved even by circumstantial evidence, but in the instant case, the same is also missing. At least, there has to be some evidence for transmission of thoughts sharing unlawful act which as stated above is completely missing. The official duty implies that an act or omission must have been done by the public servant in the course of his service and such an act or omission must have been done in performance of his duty which further must have been in official nature. He while passing the bills of Karnail Singh for payment, had been acting in discharge of his official duty. Section 197 Cr.P.C. would apply in this case and sanction was required to be taken before launching proceedings in this case, which admittedly was not taken.

Keeping in view the totality of the circumstances, the present revision preferred by the legal representatives of Ram Sarup Gupta is allowed, conviction and sentence imposed upon Ram Sarup Gupta(since deceased) by the Courts below is set aside and he stands acquitted of the charges.

(ARVIND KUMAR)

March 17, 2007 JUDGE

JS